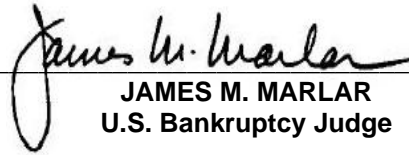


SIGNED.



Dated: April 24, 2009


JAMES M. MARLAR
U.S. Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 11
FIRST MAGNUS FINANCIAL)
CORPORATION,) No. 4:07-bk-01578-JMM
) **MEMORANDUM DECISION**
Debtor.) **ON REMAND (MCA FINANCIAL FEES)**

Before the court is a remand from the Ninth Circuit's Bankruptcy Appellate Panel (the "BAP") concerning compensation to MCA Financial Group, Ltd. ("MCA") (application at Dkt. #1881 and order at Dkt. #2347). A hearing was held on April 21, 2009, after which the court took the matter under advisement.

Because the parties are familiar with the procedural facts involved, the court will not restate them, except as necessary to explain its decision. In prior proceedings before the bankruptcy court, MCA had requested a fee of \$481,192, but the court had only allowed \$332,772. At this point in the case, MCA has been paid the allowed sum, but the difference of \$148,420 remains in a reserved account subject to the outcome of the remanded issue. When the bankruptcy court determined that MCA could only receive the \$332,772 amount, the issue of the remaining \$148,420 fee was appealed to the BAP.

The BAP concluded that the court had applied the wrong standard to consideration of MCA's fees, and remanded the matter with the following condition, in fn. 14:

1 Of course, the Panel expresses no opinion whether the fees
2 requested by MCA will, after review by the bankruptcy court
3 under the § 330(a) standards, pass muster as "reasonable
4 compensation."

5 The BAP's statement, however, while helpful on the surface, breaks down in the crucible of reality.
6 Since neither the Debtor, the reorganized Debtor, the U.S. Trustee nor any creditor or interested
7 party ever objected to MCA's fee application, raised a reasonableness issue or appeared on appeal
8 to support the bankruptcy court's orders, the court has no one before it to pick up the remanded
9 issue. All the court can rely on is what it felt that all parties knew at the inception of the case, which
10 was that the court clearly observed that the fees suggested were simply too high for the type of case
11 before it. There is no doubt in the court's mind that any party ever had any doubt as to the court's
12 concerns about what has now become half million dollar administrative expense.

13 But, by the same token, since no party-in-interest has picked up the gauntlet, the court
14 knows when it is licked.

15 A court cannot be both an advocate for its own record, as well as an impartial judge.
16 MCA has done all it can, as a professional and with competent counsel, to advance its position.
17 While the court may have other views, those must, in view of this record and the remand by the
18 BAP, subordinate them. Had any party stepped forward to challenge MCA's request on
19 reasonableness grounds, then further hearings could have been conducted.

20 But, since no objections were filed, and since reasonableness is the standard, this court
21 can come to no other conclusion but that the fees requested are reasonable, and that MCA has ably
22 presented its side of the issue. The court has no record upon which to conclude otherwise.

23 Were MCA's fees those of an attorney, the court would have an independent basis
24 upon which to evaluate the worth of its services. This is because the court, also a lawyer, would
25 understand what is necessary and reasonable, as a similar professional.

26 But MCA is a not a law firm. It provides financial services of a type far different from
27 this court's training, expertise and experience. Another similar professional, or expert, could best
28 assist in any inquiry as to MCA's fee request.

1 While the court has the power to appoint its own expert, *sua sponte*, FED. R. EVID.
2 706(a), the court feels that such a decision would be counter-productive and very expensive. Indeed,
3 the cost of such an expert would probably exceed the amount at issue, and in the end, the only
4 parties who would suffer would be the estate's lower-tier creditors, who would subsidize the inquiry.

5 Accordingly, an order will be entered that allows MCA's request for professional fees
6 in the sum of \$481,192. To the extent any portion thereof is unpaid, the Debtor and/or Debtor-in-
7 Possession is authorized to pay such remaining fees.

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9 DATED AND SIGNED ABOVE.
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